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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,874	03/26/2004	James Stephen Clark	82652	9759
22242	7590	11/23/2005		
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,874

Applicant(s)

CLARK ET AL

Examiner

Mark T. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendments filed on October 24, 2005. Applicant's arguments are deemed moot in view of the new grounds of rejection set forth below.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Saxton (US 5,758,584).

Saxton discloses a center beam railcar having features as recited in the instant claims including bulkheads 30 and center beam 18 that is provided with center sill 148, intermediate structure 72, 74, 76, 78, 84, and member 62 that is readable as a top chord. As shown in Figure 13 of Saxton, chord 62 is not substantially greater than the width of the intermediate structure, as claimed.

4. Claims 1, 4-9, 16-17 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dominguez (US 4,951,575).

Dominguez discloses a depressed central portion center beam railcar having features as recited in the instant claims including bulkheads 58, and a center beam that comprises center sill 6, intermediate structure 10, and member 12 that is readable as a top chord. As shown in Figure 7 of Dominguez, chord 12 is not substantially greater than the width of the intermediate structure, as claimed.

Regarding the instant claimed clear loading height of at least 14ft above the depressed central portion, the railcar of Dominguez inherently has a clear loading height of at least about 14ft above the depressed central portion that is outside the lateral bounds of the overhead structure 20.

Regarding the instant claimed length of the end portion of the railcar, as recited in instant claims 7, and the instant claimed elevation dimension, as recited in instant claim 8, note that since the railcar of Dominguez is inherently capable of being used to carry a product that has a product length and an elevation dimension corresponding to the claimed dimensions of the railcar, as claimed, the instant claimed length and elevated dimension is considered met.

As to the instant claimed winches for flexible straps, consider winch 74 of Dominguez.

Regarding the instant claimed horizontal support structures, consider the horizontal structural supports, as shown in Figure 3 of Dominguez, that extend between bulkheads 58 and columns 10.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saxton (US 5,758,584).

Saxton is applied above. It is noted that chord 62 of Saxton is not thick enough to be readable as generally square as claimed; however, it would have been obvious to one skilled in the art to substitute a thicker beam for chord 62 of Saxton so as to provide a stronger support. Accordingly, such a thicker beam is readable as generally square as claimed.

7. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dominguez (US 4,951,575).

Dominguez is applied above.

Regarding the instant claimed length of the end portion of the railcar, as recited in instant claims 7, or the elevation dimension, as recited in instant claim 8, it would have been obvious to one skilled in the art to use the railcar of Dominguez to carry any products including a product that has a length and a height corresponding to the length of the railcar end portion and the height of the railcar depressed portion because it is obvious that railcar of Dominguez is designed to carry any suitable product thereon, and

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the product having such length and height, as described above, is clearly a suitable product to be carried by Dominguez's railcar.

8. Claims 10-11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dominguez (US 4,951,575) in view of Bonner (US 6,058,799)

Dominguez is applied above.

Saxton, Figure 4, shows conventional winch 100 that are designed to operate with an elongated flexible member in the form of a heavy duty nylon strap 104 that is 4-8 inch wide and up to 50 ft long.

In view of Bonner, it would have been obvious to one skilled in the art to substitute heavy duty winches and straps, similar to that shown in Figure 4 of Bonner, for that of Dominguez so as to enhance the securement of loads on the railcar.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (2:00-8:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
11/16/05